STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED
JUN 26 2014
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

[redacted]

APPEAL NO. 14F-04319

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.
_____/

## FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter on June 13, 2014, at 10:45 a.m. The hearing was convened in Fort Lauderdale, Florida.

## APPEARANCES

For the Petitioner: [redacted]
Petitioner

For the Respondent: Ken Hamblin
Area 10 Fair Hearing Coordinator
Agency for Health Care Administration

## STATEMENT OF ISSUE

The issue is the denial by the Agency for Health Care Administration of a request from the petitioner for a C-T Scan of the pelvis.

## PRELIMINARY STATEMENT

[redacted] ("petitioner"), the petitioner, appeared on his own behalf. Donna Fernandez, a certified sign language interpreter and Executive Director of CODA Link,

Inc., and Dina Shimek, a certified sign language interpreter with CODA Link, Inc., were present to assist with sign language interpretation.

Ken Hamblin, Field Office 10 Medicaid Fair Hearing Coordinator for the Agency for Health Care Administration (sometimes hereinafter referred to as "respondent", "AHCA" or the "Agency), appeared on behalf of the Agency. The following individuals from South Florida Community Care Network ("SFCCN") appeared as witnesses on behalf of the Agency: Alexander Fabano, CMS ("Children's Medical Services") Contract Manager; Edward Markovich, M.D., Adult Medical Director; Olunwa Ikpeazu, M.D., Pediatric Medical Director; Camaro Woods, Grievance and Appeals Coordinator; and Sharon Chawla, Utilization Management Supervisor.

During the hearing, the petitioner introduced Petitioner's Exhibit "1", inclusive, which was accepted into evidence and marked accordingly. Also at the hearing, the respondent introduced Respondent's Exhibits "1" through "6", inclusive, all of which were accepted into evidence and marked accordingly. The hearing record in this matter was left open until the close of business on June 19, 2014 for the respondent to provide additional information. Once received, the information was accepted into evidence and marked as Respondent's Exhibit "7".

Prior to proceeding to the merits of the case at the hearing, the hearing officer addressed the Motion to Dismiss filed by the respondent in this matter. Upon opening the matter for discussion, respondent's representative explained that since the hearing date was moved forward to accommodate the petitioner's request for an earlier hearing date, the issue is no longer moot. He then proceeded to withdraw the Motion to Dismiss on the record.

## FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. The petitioner is an adult male. The petitioner resides in Broward County.

2. The petitioner was eligible to receive Medicaid at all times relevant to this proceeding.

3. Petitioner receives Medicaid services through South Florida Community Care Network. South Florida Community Care Network is a Provider Service Network ("PSN") that provides services to certain Medicaid eligible residents in Broward County.

4. On or about March 17, 2014, the petitioner felt a lump in his right pelvis. The lump was located directly on the top end of a scar the petitioner has which is the result of the removal of a previous lump in 2008.

5. The petitioner met with his primary care physician ("PCP") on April 7, 2014 for a consultation to discuss the lump. Petitioner's PCP told him that he would complete a referral for a C-T Scan and that petitioner would receive paperwork or a telephone call advising him of the appointment for the C-T Scan.

6. On or about April 11, 2014, petitioner's PCP submitted a preauthorization form to [redacted] requesting a C-T Scan of the petitioner's pelvis with contrast.

7. The physician's order for the C-T Scan explains the reason for the order is enlarged lymph nodes. Under History of Present Illness, the order explains that, several weeks ago, the petitioner had a sensation of a right thigh lump and, last week, felt a pop and liquid seemed to be released. The order states the petitioner had no pain, but the

area was tender when pressure was applied. Under the section entitled Lymph Nodes, the order states that the right inguinal lymph nodes were enlarged, indurated, non-T, no discharge, nonerythemic, and non-fluctuant. No other lymph nodes were enlarged.

8. The Medical Director reviewed the petitioner's request for a C-T Scan on April 30, 2014 and denied the request as it did not meet InterQual Criteria for radiologic imaging of the pelvis with contrast. The Medical Director notes regarding the denial state as follows

> ...right inguinal lymph node enlarged, nontender. No other palpable lymphadenopathy found. No abdominal mass upon exam.
>
> No other complaints of additional symptoms (fever, weight loss, abdominal pain, appetite loss, night sweats)
>
> Given history and clinical findings a CT imaging study is not indicated at the current time.

9. The InterQual Criteria are nationally recognized guidelines that are used by providers in the healthcare industry when making service determinations. InterQual is an accepted industry standard for review of service requests.

10. The petitioner's condition is referred to as peripheral lymphenopathy. Peripheral lymphenopathy is defined as a condition wherein one area of the body has an enlarged lymph node.

11. The petitioner does not have a history of cancer. The lump removed in 2008 was benign.

12. Peripheral lymphenopathy is not one of the conditions that appears on the InterQual list of criteria for immediate approval of imaging of the pelvis.

13. South Florida Community Care Network follows evidence-based medicine practice. Evidence-based medicine uses the current best evidence in making decisions about the care of individual patients.

14. Pursuant to evidence-based medicine practice, the appropriate course of care for petitioner is observation for three to four weeks since there is nothing else in petitioner's history or physical examination to suggest an acute malignancy.

15. Although radiologic imaging is helpful in determining the size and location of a growth, it is not the means for making a diagnosis. A diagnosis may only be made after a biopsy. The request from petitioner's physician mentioned nothing about a biopsy.

16. After the petitioner did not receive notification of the date and time of the C-T Scan, he visited his doctor's office on or about April 30, 2014 to follow-up on the request. The petitioner was informed that the request for a C-T Scan was denied.

17. Since the petitioner's request for a C-T Scan was denied, the petitioner has developed a second lump at or near the bottom end of the same scar where the first lump is located.

18. The petitioner did not return to his primary care physician for a follow-up appointment regarding the first lump or to report the appearance of a second lump.

19. The SFCCN Medical Director had a peer-to-peer consultation with the petitioner's primary care physician regarding the petitioner's request. The SFCCN Medical Director testified the petitioner's primary care physician agreed that observation is the appropriate course of action pursuant to evidence-based medicine theory.

20. Immediate radiologic testing is not the best practice or safest alternative once an enlarged lymph node is detected. The swelling associated with many inflamed lymph nodes decreases naturally over time.

## CONCLUSIONS OF LAW

21. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to § 120.80, Fla. Stat.

22. This is a final order pursuant to § 120.569 and § 120.57, Fla. Stat.

23. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.

24. Petitioner in the present case is requesting a new or additional service. Therefore, in accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the petitioner.

25. The standard of proof in an administrative hearing is by a preponderance of the evidence. (See Fla. Admin. Code R. 65-2060(1).) The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.

26. The Florida Medicaid program is authorized by Fla. Stat. ch 409 and Fla. Admin. Code R. 59G. The Medicaid program is administered by the respondent.

27. The Florida Medicaid Provider General Handbook – July 2012 is incorporated by reference in the Medicaid Services Rules found in Fla. Admin. Code Rule 59G-5.020.

28. Page 1-22 of the Florida Medicaid Provider General Handbook provides a list of Medicaid covered services. These services include X-ray services.

29. Fla. Admin. Code R. 59G-1.010(166) explains that medical or allied care, goods, or services furnished or ordered must meet the definition of medically necessary or medical necessity, and defines medical necessity as:

> (a) "Medical necessary" or "medical necessity" means that medical or allied care, goods or services furnished or ordered must meet the following conditions:
> 1. Be necessary to protect life, to prevent significant illness or significant disability or to alleviate severe pain;
> 2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patent's needs;
> 3. Be consistent with generally accepted professional medical standards as defined by the Medicaid program and not be experimental or investigational;
> 4. Be reflective of the level of service that can safely be furnished, for which no equally effective and more conservative or less costly treatment is available statewide; and,
> 5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. . .
>
> (c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods or services does not, in itself, make such care, goods or services medically necessary, or a medical necessity, or a covered service.

30. Fla. Admin. Code R. 59G-1.010(226) defines prior authorization as follows:

> "Prior authorization" means the approval by the Medicaid office for a Medicaid provider, or by a prepaid health plan for its affiliated providers, to deliver Medicaid covered medical or allied care, goods, or services in advance of the delivery of the care, goods, or services.

31. The Florida Medicaid Practitioner Services Coverage and Limitations Handbook April 2014 is incorporated by reference in the Medicaid Services Rules by Fla. Admin. Code R. 59G-4.025.

32. The Florida Medicaid Practitioner Services Coverage and Limitations Handbook April 2014 addresses prior authorization of outpatient non-emergent diagnostic imaging on Page 2-99 and explains as follows

> Prior authorization (PA) is the approval process required prior to providing certain Medicaid services to recipients. Medicaid will not reimburse for the designated outpatient, non-emergent diagnostic imaging services without prior authorization. Florida Medicaid contracts with QIO entities to safeguard against unnecessary utilization and to assure the quality of care provided to Medicaid recipients. All diagnostic imaging providers are required to adhere to the established requirements and submit the necessary information to Florida Medicaid or the Medicaid QIO currently in place for this process.
>
> Note: The current QIO PA process is available on the Web at www.medsolutions.com/implementation/AHCA.

33. Section 409.912 (4), Florida Statutes explains "The agency may contract with: (d)1. A provider service network..." The Agency for Health Care Administration has contracted with the South Florida Community Care Network to provide services to certain Medicaid eligible recipients.

34. The South Florida Community Care Network Provider Manual on Page 42 lists CT Scans as one of the services requiring provider service network authorization.

35. The South Florida Community Care Network Provider Manual on Page 41 states: "InterQual and other nationally recognized criteria and Medicaid Coverage and Limitations Handbooks will be used to evaluate requests for medical appropriateness/ necessity.

36. In the present case, the petitioner noticed a lump in his right pelvic area on or about March 17, 2014. He met with his primary care physician on or about April 7, 2014 to discuss the lump. His primary care physician forwarded a prior authorization form to [redacted] a part of the [redacted], for review on or about April 11, 2014. The [redacted] Medical Director reviewed this form on or about April 30, 2014 and determined the request did not meet InterQual imaging criteria, consequently denying the request. [redacted] practices evidence-based medicine. Evidence-based medicine uses the current best evidence in making decisions about the care of an individual patient. A review of the InterQual imaging criteria reveals that the request was appropriately denied at the time it was reviewed in favor of additional observation to determine the appropriate course of action. The petitioner did not return to his primary care physician to have the physician reexamine the first lump or the second lump which appeared after the C-T Scan was denied. Pursuant to the above, the petitioner has not met his burden of proof that the Agency for Health Care Administration, through [redacted] incorrectly denied his request for a C-T Scan.

37. Should the petitioner's lumps continue to persist, he is encouraged to visit his primary care physician for additional evaluation. If his primary care physician and the petitioner still feel that a C-T Scan is medically necessary at the time of that visit, nothing in this Order prevents the petitioner from submitting a second request for a C-T Scan of his right pelvis.

## DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is hereby DENIED.

## NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 26th day of June, 2014, in Tallahassee, Florida.

Peter J. Tsamis

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Copies Furnished To: [redacted] Petitioner
Ken Hamblin, Area 10, AHCA Program Operations Adminstrator